

REMARKS

This is intended as a full and complete response to the Final Office Action dated December 9, 2009, having a shortened statutory period for response set to expire on March 9, 2010. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-2, 4-13, and 30-38 are pending in the application. Claims 1-2, 4-13, and 30-38 remain pending following entry of this response.

Statement of Substance of Interview

On February 5, 2010, a telephonic interview was held between Gero G. McClellan, attorney of record, Casey Parks, and Examiner Zhe. The parties discussed the cited references including *Camble* and *Fortes*. Claims 1 and 10 were discussed.

During the interview, Applicants argued that the "partition" disclosed by *Camble* was not a logical partition as defined in the current specification. The Examiner expressed a desire to review the claim interpretation standard, but agreed that there were significant differences between the "partition" in *Camble* and a "logical partition" as defined by the current specification.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejects claims 1-2, 4-6, 8, 9, 30, 36 and 38 under 35 U.S.C. 103(a), arguing that the claims are unpatentable over *A case for Grid Computing On Virtual Machines, Fortes et al* (hereinafter *Fortes*) in view of *Camble et al.*, Pub No. 2003/0135580 (hereinafter *Camble*).

The Examiner takes the position that *Fortes* teaches all the elements of claim 1, with the exception of "a method for expanding resources available to a first logical partition" including "providing on-demand resources to the first logical partition based upon the usage of the partition resources of the first logical partition and a usage of the grid resources, wherein the on-demand resources are available to the system, and access to the on-demand resources is controlled by a manufacturer of the system."

However, the Examiner argues that *Camble* teaches this limitation, and that it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to combine these two references.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Furthermore, during patent examination, the claims must be "given their broadest reasonable interpretation consistent with the specification." MPEP 2111; *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). The Federal Circuit explained that:

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art.

In re. Am. Acad. Of Sci. Tech. Ctr., 367 F.3d 1359 (Fed. Cir. 2004). Respectfully, Applicants submit that the Examiner has not properly characterized the teachings of the references with respect to the current claims. Specifically, Applicants submit that the Examiner has not properly construed the *Camble* reference and the term "logical partition" as found in the current claims. Accordingly, a *prima facie* case of obviousness has not been established.

The proper standard for examination is that claims must be "given their broadest reasonable interpretation *consistent with the specification.*" Applicants' specification provides a clear definition for a "logical partition", which precludes the application of *Camble* to the present claims.

Applicants use the terms “logically partitioned (LPAR) computer system” and “logical partition” as they are understood by those of ordinary skill in the art. As explained in the current specification, “in a logically partitioned (“LPAR”) computer system, available system resources are allocated among multiple sets of resources so that each set of resources can be operated independently of the other.” Para. [0001]. As an example, Figure 1 shows a “logically partitioned system ... configured such that the available system resources, such as the processor(s) 115, a memory 120, and other resources 125, can be allocated among multiple, logical partitions.” Furthermore, the division of these resources is “typically accomplished via a layer of software components commonly referred to as a partition manager.” Para. [0001]. The specification continues, explaining that:

One objective of a partition manager is to allow each logical partition to run software, such as operating systems and operating system specific applications, that are typically developed to run on a dedicated computer system with little or no modification. For example, a system administrator may want one logical partition to run IBM's OS/400 operating system, a second logical partition to run IBM's AIX operating system, and a third logical partition to run the LINUX operating system.

Para. [0002]. Thus, according to the present specification, a logical partition is defined as a set of computer resources that can independently run software, such as an operating system and software applications designed for the operating system. In other words, a logical partition is subdivision of resources on a computer system that defines a computer unto itself.

The Examiner seems to suggest that *Camble* discloses providing on-demand resources to a first logical partition based upon the usage of the partition resources of the first logical partition and a usage of the grid resources. Respectfully, Applicants submit that *Camble* fails to disclose a logical partition, as is used by the current specification and as found in claim 1. Initially, Applicants note that *Camble* does not disclose a “logical partition” or a “virtual machine,” but only discloses a “partition.” More specifically, *Camble* discloses a method “for providing data storage capacity on demand” comprising, in part, “partitioning the reserved set into a subset of the set of slot elements and data transfer elements activated as a partition secured for use by the

customer.” By way of example, *Camble* teaches that a storage service provider “may establish a set of forty slots, such as provided by trays 404 through 407, and two drives, such drives 418 and 419, as a partition, such as partition 401, for the use of the customer.” *Camble*, Para. [0020]. *Camble* continues, disclosing a first example partition including “one drive, 518 and one tray 304 of slots” and a second example partition including “3 drives 519, 520 and 521 and 5 trays of slots 505 through 511.” Thus, *Camble* discloses a method of providing on-demand storage, and defines a partition as a set of slots and drives for providing storage space to a customer.

The Examiner broadly construes the recitation of a “logical partition” in the claims as any subdivided resource, such as a set of slots or drives reserved for a customer. Respectfully, such an interpretation is untenable when the proper examination standard is applied, which requires that the claims be “given their broadest reasonable interpretation *consistent with the specification*.” Any interpretation of “logical partition” consistent with the specification requires a set of computer resources able to independently run an operating system and other software, such that the “logical partition” is a computer unto itself. As such, *Camble* fails to disclose a logical partition. As such, Applicants respectfully request the rejection to claim 1 be withdrawn and the claim allowed.

Independent claims 10, 30 and 36 contain a comparable limitation, and as claim 1 is allowable, claims 10, 30 and 36 and all dependent claims are believed to be allowable as well. Thus, all the claims are believed to be allowable, and allowance is respectfully requested.

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact Gero McClellan, attorney of record, at (336) 698-4286, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. MCCLELLAN, Reg. #44227/

Gero G. McClellan
Registration No. 44,227
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicants